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FISCAL IMPACT REPORT

ORIGINAL DATE 2-18-07
 SPONSOR Trujillo LAST UPDATED 3-08-07 HB 1130/aHENRC
 SHORT TITLE Liquid Waste Revolving Loan Fund Act SB _____
 ANALYST Aubel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$5,000.0	Non-Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	\$5,000.0		Non-Recurring	Liquid Waste Revolving Loan Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		*See narrative		\$0.01*	Recurring	General Fund
		\$5,000.0		\$5,000.0	Non- Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

No longer duplicates SB 920
 Relates to SB 702 and HB 859

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)
 Energy, Minerals and Natural Resources Department (EMNRD)

New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of HENRC Amendment

The House Energy and Natural Resources Committee Amendment include three primary changes:

1. The “indigent recipient” maximum threshold income is reduced from 250 percent of the federal poverty level to 150 percent of the federal poverty level. For a four person household, the maximum household income under the original bill of \$51.6 thousand would now be just under \$31 thousand.
2. The loan rates are adjusted to reflect the new 150 percent threshold by removing the 1 percentage point below the prime rate for household income between 150 and 200 percent below poverty level.
3. The appropriation of \$5.0 million is removed and language is inserted to reflect a future appropriation by the Legislature.

Synopsis of Original Bill

House Bill 1130 appropriates \$5.0 million from the general fund to a newly created fund in the state treasury, the liquid waste revolving loan fund, to be administered by the New Mexico Environment Department to make low-interest loans to indigent homeowners to purchase, permit, install and maintain on-site liquid waste treatment systems.

FISCAL IMPLICATIONS

The appropriation of \$5.0 million contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2008 shall not revert to the general fund. The fund consists of appropriations, gifts, grants, donations and bequests to the fund.

No appropriation is made in HB 1130 for administrative costs to NMED, although it provides for administrative costs to be paid from the fund when accrued interest income is sufficient to cover the costs. It should be noted that a successful program of making the loans would reduce the fund balance fairly quickly, and because of the long-term nature of these loans (up to 40 years), the fund would not be quickly replenished. Thus, any interest revenue would likely be minimal unless additional funds were acquired.

No estimate of administrative costs for NMED was provided. These on-site systems would most likely not require the technical expertise of the Construction Program Bureau, but would require administrative support from the Environmental Health Program and at least one loan coordinator. Because the program is unique to the menu of funds currently managed by NMED, the total costs are indeterminate, but should not be excessive.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

Septic systems are the leading source of groundwater pollution and have impaired 355 river miles in New Mexico. Low-income households may not have the financial resources to install modern liquid waste systems that comply with the Liquid Waste Regulations or to replace substandard existing liquid waste systems with proper systems.

HB 1130 will establish a method for low-income individuals to receive assistance to address installation of liquid waste and disposal systems. This bill creates a new revolving loan fund within the state treasury, administered by the NMED. Any expenditure will be authorized by the Secretary of Finance and administration by warrant on vouchers signed by the Secretary of Environment.

NMED will provide low-interest, long-term loans to indigent recipients for permitting, site evaluation, design, purchase and installation costs of new on-site liquid waste treatment and disposal systems, and up to two years of maintenance, operation and any required testing of the systems. HB 1130 defines “indigent recipient” as an owner of an owner-occupied single-family dwelling, an owner-occupied single-family dwelling with a guest house or an owner-occupied duplex whose household income does not exceed two hundred fifty percent of the federal poverty level.

The Federal poverty level rates are as follow for calendar year 2007:

2007 POVERTY LEVEL GUIDELINES
ALL STATES (EXCEPT ALASKA AND HAWAII) AND DC
Income Guidelines as Published in the Federal Register on January 24, 2007
ANNUAL GUIDELINES

FAMILY SIZE	100% POVERTY*	133%	150%	170%	175%	185%	200%	250%
1	10,210	13,579	15,315	17,357	17,868	18,889	20,420	25,525
2	13,690	18,208	20,535	23,273	23,958	25,327	27,380	34,225
3	17,170	22,836	25,755	29,189	30,048	31,765	34,340	42,925
4	20,650	27,465	30,975	35,105	36,138	38,203	41,300	51,625
5	24,130	32,093	36,195	41,021	42,228	44,641	48,260	60,325
6	27,610	36,721	41,415	46,937	48,318	51,079	55,220	69,025
7	31,090	41,350	46,635	52,853	54,408	57,517	62,180	77,725
8	34,570	45,978	51,855	58,769	60,498	63,955	69,140	86,425

The number of households that would be eligible for the program is not known. However, the following data from the 2005 U.S. Data Abstract, when combined with the NMED data that shows that the greatest contamination to groundwater in New Mexico comes from cesspools or failed on-site systems, indicates a highly probable need for such assistance.

Median Household Income	\$37,492
Persons Below Poverty Level	18.5%

HB 920 stipulates that NMED shall not determine minimum credit standards as a condition to receive a loan from the fund. In determination of a loan application, the criteria will be made to approve loan proceeds based upon rules and regulations as determined by the Environment Department and the New Mexico Finance Authority. Loans made from the fund will have a maximum term of 40 years with the interest rate equal to the prevailing prime rate as published in the *Wall Street Journal*. The interest rate can be reduced during the term of the loan in the following manner:

- 1 percent below prime rate, if the household drops below 150 percent but no more than 200 percent of the federal income poverty level;
- 2 percent below prime rate, if the household drops below 100 percent but no more than 150 percent of the federal income poverty level;
- 3 percent below prime rate, if the household drops below 100 percent of the federal income poverty level.

The loan has equal installment payments due one year from approval of the loan. Loan documents shall be produced declaring the intent to repay the funds borrowed.

ADMINISTRATIVE IMPLICATIONS

Under HB 920, NMED and the NMFA will devise rules to implement the loan program, including the application procedure and requirements for disbursing proceeds. NMFA maintains that there could be a considerable amount of time to be spent working on the rules and regulations of creation of a new fund that is devised to be a revolving loan fund.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 702, a similar bill proposing to establish an assistance fund that provides funding for indigent individuals or households for installing liquid waste systems. SB 702 does not require the repayment of these funds.

Relates to HB 859, which provides grant funding to low-income households for replacing cesspools with on-site septic systems.

Duplicates HB 1130.

TECHNICAL ISSUES

NMED notes that HB 1130 does not differentiate between the construction of new liquid waste systems and the replacement of substandard existing systems, nor does it establish a standard for the type of liquid waste system to be financed to the minimum level of treatment system required by the Liquid Waste Regulations. Thus, loan recipients could acquire financing to install a more-expensive, advanced liquid waste treatment system for property where a conventional septic system would be allowed.

EMNRD believes that NMED acts strictly as a financial institution in administering the loan program, and has very little discretion in that role. It is not functioning as a regulatory agency

setting and enforcing standards for waste treatment and disposal systems.

OTHER SUBSTANTIVE ISSUES

EMNRD maintains that although the act is titled the “Liquid Waste Revolving Loan Fund Act,” it is not set up to be a revolving fund for many years, if ever. Loan terms can be as long as 40 years, so amounts loaned out may not return to the fund for many years. The lender is not permitted to consider the borrower’s credit qualifications and there are no express provisions for canceling or collecting on the loans in event of default. The interest rate is set at the prime rate at the time the loan is made. The interest rate can only go down, it can never go up, during the life of the loan, which may be as long as 40 years.

NMFA indicates that HB 1130 is balancing a fine line between the anti-donation clauses, working as an independent funding source for individual household members.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Substandard liquid waste systems owned by indigent persons and households will continue to degrade water quality, resulting in hazards to public health and interference with property rights and welfare.

POSSIBLE QUESTIONS

1. Since NMED is primarily a regulatory agency, would this loan program be more effectively administered by NMFA, which has a successful track record in running loan programs?

Questions raised by EMNRD are as follows:

2. Whether and under what circumstances loans can be cancelled;
3. What collection proceedings are available in the event of default;
4. What happens if the property is transferred (must the loan be repaid immediately, or does it transfer to the new owner – who may not be indigent?); and
5. If the recipient installs a liquid waste-system qualifying for the \$1,500 income tax credit provided for in HB 802, will the recipient receive the credit in addition to the loan?

MA/nt